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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 332

WILLARD UPHAUS,

Appellant,

v.

LOUIS C. WYMAN, Attorney General,
State of New Hampshire,

Appellee.

On Appeal From the Supreme Court of New Hampshire

JURISDICTIONAL STATEMENT

ROYAL W. FRANCE,
154 Nassau Street,
New York 4, N. Y.

HUGH H. BOWNES,
Laconia, New Hampshire.

Attorneys for Appellant.

LEONARD B. BOUDIN,
RABINOWITZ AND BOUDIN,
25 Broad Street,
New York 4, N. Y.,
Of Counsel.

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WILLARD UPHAUS,

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v.

LOUIS C. WYMAN, Attorney General, State of New Hampshire,

Appellee.

On Appeal From the Supreme Court of New Hampshire

JURISDICTIONAL STATEMENT

Appellant, Willard Uphaus, appeals from the judgment of the Supreme Court of New Hampshire, entered on February 28, 1957 which sustained a lower court judgment of contempt sentencing him to indefinite imprisonment for refusing to turn over to appellee a list of guests at a summer camp, and directed him to turn over to appellee his private correspondence with or concerning guest lecturers at the camp.

Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

Opinions Below

The opinions in the Supreme Court of New Hampshire are reported at 100 N. H. 436, 130 Atl. 2d 278, and appear in Appendix A as rendered on February 28, 1957. A mo-

tion for rehearing was denied on March 27, 1957, the Court however modifying the majority opinion by the memorandum appearing in Appendix B. A second motion for rehearing was denied on July 9. 1957 without opinion. There was no opinion in the Superior Court.

Jurisdiction

This proceeding was brought by appellee, Louis C. Wyman, Attorney General of the State of New Hampshire, in the Superior Court for Merrimack County, New Hampshire, pursuant to the Revised Laws of New Hampshire (1942) Chapter 370, §§ 18 and 19 (now RSA 491, §§ 19 and 20). Its purpose was to compel appellant to comply with certain subpoenas *duces tecum* issued by appellee in the course of an investigation conducted by him under a "Joint Resolution Relating to the Investigation of Subversive Activities," New Hampshire Laws of 1953, Chapter 307,[1] which delegated to the Attorney General power to investigate violations of the Subversive Activities Act of 1951, New Hampshire Laws of 1951, Chapter 193, and NHRSA, Ch. 588[2] and "to determine whether subversive persons as defined in said Act are presently located within this state." The said statutes are set forth in Appendix C.

After hearing, the Superior Court ordered appellant to produce his guest lists, and upon his refusal adjudged him in contempt of court, and ordered him committed to the County Jail until purged of contempt (R. 2, 68).[3] The court reserved and transferred to the state Supreme Court without ruling the issue of appellant's duty to produce correspondence with or concerning guest speakers at appellant's camp (R. 1).

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[1] As extended, New Hampshire Laws of 1955, Chapter 197.

[2] New Hampsire Revised Statutes Annotated, Chapter 588.

[3] "R" refers to the Reserved Case, constituting the record on appeal to the state Supreme Court under New Hampshire practice.

Appellant excepted to the Superior Court's adverse rulings and appealed to the state Supreme Court. On February 28, 1957 that Court overruled appellant's exceptions, affirmed the judgment of contempt of the Superior Court and ordered appellant to produce the aforesaid correspondence (Appendix A).

A timely motion for rehearing was made and denied on March 27, 1957, the state Supreme Court, however, modifying the opinion previously rendered by it (Appendix B). Notice of appeal to the Supreme Court of the United States was filed on April 26, 1957 with the state Supreme Court. A second motion for rehearing was filed on June 25, 1957, calling the latter court's attention to this Court's decision in *Sweezy* v. *State of New Hampshire*, 77 Sup. Ct. 1203. This motion for rehearing was denied on July 9, 1957.

Jurisdiction of the appeal is conferred on this Court by 28 U. S. C. §§ 1257(2) and 2101(c). The following cases sustain the jurisdiction of this Court: *Hamilton* v. *Regents of the University of California*, 293 U. S. 245; *McCollum* v. *Board of Education*, 333 U. S. 203; *Wieman* v. *Updegraff*, 344 U. S. 183; *Garner* v. *Los Angeles Board*, 341 U. S. 716; *Slochower* v. *Board of Higher Education*, 350 U. S. 551, rehearing denied, 351 U. S. 944.

Statutes Involved

The validity of the "Joint Resolution Relating to the Investigation of Subversive Activities", New Hampshire Laws, 1953, Chapter 307, as extended, Laws, 1955, Chapter 197, and of the Subversive Activities Act of 1951, New Hampshire Laws of 1951, Chapter 193, NHRSA, Chapter 588, is involved. These statutes appear in Appendix C.

Questions Presented

(1) Whether Chapter 307, New Hampshire Laws of 1953, extended by Chapter 197, New Hampshire Laws of 1955 as construed to require the delivery to the Attorney General as agent of the state legislature of lists of appellant's guests at the New Hampshire World Fellowship Center and to require the delivery of the appellant's correspondence with speakers at the said center, under penalty of indefinite confinement:

(a) Violates appellant's rights of free speech and association under the First and Fourteenth Amendments to the Constitution of the United States.

(b) Is an unreasonable search and seizure in violation of appellant's right to due process under the Fourth and Fourteenth Amendments.

(c) Is so vague and indefinite that it deprives the appellant of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(d) Is arbitrary and unreasonable and thereby deprives the appellant of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(2) Whether Chapter 307, New Hampshire Laws of 1953, as extended, construed as above set forth, violates Article VI of the Constitution of the United States in that it purports to deal with matters within the exclusive power of the Federal Government and with respect to which the Federal Government has already legislated to the exclusion of the state legislation.

(3) Whether the reliance by the Supreme Court of New Hampshire upon so called "subversive lists" compiled by the Attorney General of the United States and the Committee on Un-American Activities of the House of Representatives is arbitrary and unreasonable, violates his rights of free speech, assembly and association and deprives him of his privileges and immunities—all under the Fourteenth Amendment to the United States Constitution.

(4) Whether Chapter 307, New Hampshire Laws of 1953, as extended, construed and applied as set forth above, constitutes a bill of attainder in violation of Article I, § 9 of the Constitution of the United States.

(5) Whether the sentence of the New Hampshire Supreme Court, committing the defendant to imprisonment until he answer the questions put to him, constitutes cruel and unusual punishment within the Eighth and Fourteenth Amendments to the Constitution of the United States.

Statement of the Case

Appellant, Willard Uphaus, is the Executive Director of World Fellowship Inc. a charitable corporation organized under New Hampshire law, which operates a summer camp in that state. It is "a religious motivated movement in the highest sense which seeks to bring together for fellowship and discussion the representatives of all faiths to the end that there may be peace, brotherhood and plenty for all men, women and children. It is a movement world-wide in its purpose" (Appendix A, 16).

World Fellowship maintains accommodations for the public and it makes available to them guest lecturers on topics of contemporary interest. As appellant testified:

"Generally they fitted into a program and came to speak on questions that I had suggested; or if they were celebrated ministers or lawyers, they just talked of their life's experiences. They talked sometimes without a closely expressed topic. Sometimes they just sat down for an evening around the fire and expressed their—told stories of their lives, their interest and their problems" (R. 41, 42).

In 1953, appellee began his investigation under the "Joint Resolution Relating to the Investigation of Subversive Activities." See *Sweezy* v. *New Hampshire*, 77 S. Ct. 1203. Appellant was one of the persons subpoenaed and interrogated by appellee—because he and some of his guest speakers were connected with organizations described as subversive by the United States Attorney General and by the House Committee on Un-American Activities (R. 31, 40, 51, 52).

Appellant answered all questions concerning his own associations denying, *inter alia* that he had ever been a Communist (R. 16) or knew anyone to be a Communist (R. 56) or that the forcible overthrow of government had ever been advocated at the camp (R. 37). He declined, however to produce pursuant to subpoenaes *duces tecum* the names of guests at the camp, the names of its non-administrative employees such as cooks and groundkeepers and his private correspondence with or concerning the guest lecturers.

Thereupon, appellee filed a petition with the Superior Court of Merrimack County, New Hampshire to compel the production of this information. Such a petition, under New Hampshire practice, leads to a judicial hearing, independent of the administrative one before the Attorney General, in which the witness is again questioned and the Court after ruling upon pertinence and privilege may direct compli-

ance and enforce its order by the contempt power [4] (see R. 7, 9).

Appellant was called as a witness by appellee and again testified freely with respect to his own associations (Appendix A, 17; R. 16, 56, 57). Again, he declined to produce the papers referred to, relying upon his rights under the federal constitution.[5] He raised the foregoing federal issues in the Superior Court in the following manner:

1. At the outset, appellant's counsel objected to the subpoenas *duces tecum* because "it would violate his freedom of speech, his freedom of association, his freedom of conscience" [6] (R. 5) and "it violates the First Amendment of the Federal Constitution, and the fourth" (R. 10).

Appellant also refused to produce the papers upon the additional grounds of religious conviction and conscience (Appendix A, 18, 28; R. 11, 12, 40); he explicitly asserted his First Amendment rights of speech, religion and assembly, and his rights against unreasonable search and seizure (*id.*).[7]

His counsel subsequently objected on the ground of pertinency and on the grounds of the First and Fourteenth Amendments, *inter alia* (Appendix A, 25; R. 37, 38). At the conclusion of the proceeding in the Superior Court, appellant's counsel made a motion to dismiss as follows:

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[4] The proceeding is very similar to that in which a federal court directs a witness to answer questions put by a grand jury.

[5] All constitutional references herein are, unless otherwise indicated, to the United States Constitution.

[6] Counsel added: "The reason why he cannot do this is because of the use which the Attorney General has made in this very case of names of a number of people who had been guests of World Fellowship. What did he do in his report to the legislature? He published these names which became public property * * * *" (R. 5-6).

[7] R. 11-12 contains an elaborate statement of his reliance upon the federal constitution.

"Mr. Bownes: We move that the petition of the Attorney General, under which these proceedings have been instituted, asking that Dr. Uphaus be found in contempt for refusing to produce a list of guests at World Fellowship, Inc. for the years 1954 and 1955, and for refusing to produce his correspondence with guest speakers at World Fellowship, Inc. for the years 1954 and 1955, be dismissed on the following grounds: (1) There is no evidence at all to form any kind of basis for the • • • I have written this out and will give it to the stenographer • • • it is the same from now on as I have made before. (1) that there is no evidence at all to form any kind of basis for a showing that the questions are pertinent and relevant to the Attorney General's investigation under the so-called Subversive Activities Act. The only evidence given to support the questions asked was strictly hearsay and therefore clearly not admissible in a judicial proceeding; and the only affirmative evidence given at all was that given by Dr. Uphaus, who stated under oath that there was no advocacy of overthrow of government, by force and violence at World Fellowship, Inc. during the years 1954 and 1955. (2) The questions are not, and on the state of the record cannot be found to be pertinent or relevant to the inquiry. (3) The questions are a mere fishing expedition, and as such cannot be allowed. (4) The questions themselves violate Dr. Uphaus' individual rights under the first, fourth and fourteenth amendments of the Federal Constitution, and under part one, articles four, five and nineteen of the Constitution of the State of New Hampshire" (R. 67, 68).

The Superior Court overruled appellant's objections (R. 54) denied his motion to dismiss the proceedings and directed appellant to produce the guest list (R. 39, 67). Upon his refusal, appellant was adjudged in contempt of court and sentenced to imprisonment until he should purge himself of contempt (R. 2, 68).

The Superior Court ruled that appellant was not required to produce the names of his non-administrative em-

ployees (R. 39, 40). It did not rule upon appellant's duty to produce his personal correspondence with and concerning the guest lecturers. It transferred that matter, without ruling, to the Supreme Court of New Hampshire (R. 1, 53, 67).

Upon exceptions duly filed, the case was heard on appeal in the Supreme Court of New Hampshire. In that court, appellant made, *inter alia*, the following arguments:

(1) that appellee's investigation of subversive activities was in a field occupied exclusively by Congress. *Pennsylvania* v. *Nelson*, 350 U. S. 497 (Br. 3, 4)[8]; (2) that the subpoenas *duces tecum* violated appellant's right to privacy under this Court's decisions in *Quinn* v. *United States*, 349 U. S. 155, *Bart* v. *United States*, 349 U. S. 219, and *Emspak* v. *United States*, 349 U. S. 190 (Br. 7); (3) that the Attorney General's statutory authority, as construed by him, was so vague as to violate the due process clause (Br. 14); (4) that it violated his rights to free speech and association under the First Amendment and his rights under the Ninth Amendment (Br. 13-14); (5) that the United States Attorney General's "subversive lists" were an improper basis for investigation, citing *Wieman* v. *Updegraff*, 344 U. S. 183 (Br. 16); and (6) that his indeterminate commitment constituted cruel and unusual punishment in violation of the Eighth Amendment (Br. 24-27).

Many of these issues were met squarely by the Attorney General in his brief (A. G. Br. 2).

The New Hampshire Supreme Court resolved the issues against the appellant in its opinion on February 28,

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[8] Br. —, and A. G. Br. — refer respectively to the briefs of appellant and appellee in the state Supreme Court certified by the Clerk of that court as part of the record herein.

1957 (Appendix A). It relied repeatedly upon its earlier decision in *Wyman* v. *Sweezy*, 100 N. H. 103, later reversed by this Court in *Sweezy* v. *State of New Hampshire*, 77 Sup. Ct. 1203.

The state Supreme Court ruled directly against appellant in his attack upon the Attorney General's claim of authority from the legislature and in appellant's assertion of his rights under the First Amendment (Appendix A, 19, 26)—the two matters upon which this Court ruled in *Sweezy, supra.*

The state Supreme Court held that this Court's decision in *Pennsylvania* v. *Nelson, supra*, did not render invalid the subpoenas *duces tecum* served upon appellant, noting that the same contentions were advanced before it without success in the *Sweezy* case (Appendix A). It disregarded appellant's arguments of lack of pertinency, again upon the basis of *Sweezy*. In this connection it relied upon the fact that appellant and some of the guest speakers were members of organizations on the United States Attorney General's list.

The Questions Are Substantial

This Court, in *Sweezy* v. *New Hampshire, supra*, has conclusively established the existence of two substantial federal questions under the due process clause of the Fourteenth Amendment presented above: (1) whether the Joint Resolution is not too vague a delegation of authority for a direction to testify and judgment of contempt; (2) whether the type of questions put to the witness do not violate his right to freedom of association, speech and privacy.

This Court treated the *Sweezy* case as a proper one for certiorari rather than appeal because the appellant's brief upon the merits did not address itself to the issue of this Court's appellate jurisdiction (77 S. Ct. at 1204). It is sufficient at this point to indicate that this case draws into question the validity of the New Hampshire statutes which authorized appellee to investigate subversive activities. The hearings, orders and judgments of the courts below are not based upon any inherent judicial power, but upon the said statutes. These statutes were construed by the state Supreme Court to justify appellee's investigation and the proceedings and judgment below. In the view of four members of this Court in *Sweezy* the statutes as thus construed were unconstitutionally vague as a basis for such proceedings, order and judgment. The decision in *Sweezy* upon this point is conclusive herein since the identical statutes are involved in both cases.

In addition, two of the Justices of this Court concluded that the statutes had deprived Dr. Sweezy of due process under the Fourteenth Amendment when they authorized, as construed by the state court, the inquiries directed against him in the First Amendment area.

This holding that the statutes as construed and applied are unconstitutional necessarily applies to appellant herein. The factual situation is much the same: Dr. Uphaus, like Dr. Sweezy, was never a member of the Communist Party; he testified freely with respect to himself. He had no knowledge of anyone's membership in the Communist Party. His contempt arises from a refusal to injure other people, his guests and guest lecturers, by turning their names over to the appellee. Dr. Uphaus' right to conduct public discussions of political, social, religious and economic matters at the World Fellowship Center is on as high a constitutional level as Dr. Sweezy's right to academic freedom.

The effect of the statutes, as construed and applied, upon the First Amendment rights of speech, religion and associa-

tion raises a substantial issue under this Court's decisions in *Konigsberg* v. *State Bar of California*, 77 S. Ct. at 730; *Schware* v. *Board of Bar Examiners of the State of Mexico*, 77 S. Ct. 752, 758-760 and fn. 13; see also *DeJonge* v. *Oregon*, 299 U. S. 353 and *Wieman* v. *Updegraff*, *supra*. This was the view of two judges dissenting in part in the court below (Appendix A, 29-31). Certainly the presumptively liberal guests and speakers in this case are entitled to the same protection as the presumptively conservative readers in *Rumely* v. *United States*, 345 U. S. 41.

Where the right of the state to inquire is statutory in character and is challenged as unconstitutional, this Court has entertained appeals under 28 U. S. C. § 1257 (2). *Gerende* v. *Board of Supervisors*, 341 U. S. 56; *Wieman* v. *Updegraff*, 344 U. S. 183. The situation is no different here.

We shall address ourselves more fully to this point if the issue of jurisdiction is raised by appellee or is postponed to the hearing on the merits. Should we be found in error on the jurisdictional issue, we respectfully request that the papers herein be acted upon at the appropriate time as a petition for certiorari under 28 U. S. C. § 2103. *Sweezy* v. *New Hampshire*, *supra*.

In addition to the two issues resolved by *Sweezy*, this case presents the following substantial issues drawing into question the validity of the state's "subversion" statutes which we have cited above:

1. Appellant contends "that the investigation [under the Joint Resolution] is unconstitutional and invalid by reason of * * * *Pennsylvania* v. *Nelson*, 350 U. S. 497" (Appendix A, 18). The Act of 1951 is concerned with the "World Communist movement" directed against the United States and only incidentally—if at all—against New Hampshire (Appendix C, 33). While this Court in *Sweezy* did not discuss the point directly, it said 'We do not now

conceive of any circumstance wherein a state interest would justify infringement of rights in these fields." 77 S. Ct. at 1212. Although it did not "reach such fundamental questions of state power" in *Sweezy* (*ibid.*), it may be required to do so herein unless it reverses upon either of the two grounds set forth in *Sweezy*. Thus, a substantial question involving preemption of state authority by reason of federal anti-sedition legislation; 18 U. S. C. § 2385, is presented by this case.

2. The case likewise presents issues of unreasonable search and seizure in violation of appellant's right to due process under the Fourteenth Amendment. This is emphasized by the sweeping effect of the subpoenas *duces tecum*, by the lack of relevance to a legitimate state interest and by the fact that private correspondence is involved. See *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298, 305-6; *Boyd* v. *United States*, 116 U. S. 616; *Wolf* v. *Colorado*, 338 U. S. 25, 27-28.

3. The State Court upheld appellee's investigation under the statutes on the ground that appellant and those about whom he was interrogated were members of organizations on "subversive" lists prepared by the United States Attorney General and the House Committee on Un-American Activities (Appendix A). Such a theory disregards the circumstances under which such designations as "subversive" are made by the Attorney General of the United States (see *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123) and by the House Committee (see *Watkins* v. *United States*, 77 S. Ct. 1173). More fundamental, it erroneously assumes that our judicial system permits organizations, as such, and their members to be thus attainted (Art. I, Sec. 9, Constitution) and thereby "open game" for process, investigation and punishment. Finally such a theory conflicts with this Court's conception of the right of association as set forth in the *Wieman*, *Watkins*, *Sweezy*, *Konigsberg*, and *Schware* cases, *supra*.

4. Finally, appellant asserts that in an area clearly touching First Amendment rights the indefinite imprisonment for refusal to yield his principles constitutes cruel and unusual punishment under the Eighth and Fourteenth Amendments.

Conclusion

The state statutes which support the judgment below are invalid under the due process clause for the two reasons set forth in *Sweezy, supra.* This appears to be an appropriate case for summary reversal on the authority of *Sweezy.* In addition, this case presents the other questions set forth above which are substantial, and affect relations between the state and federal government as well as the rights of appellant, his associates and the general public. At issue in this case is the right of citizens of the United States freely to associate, to discuss matters of public concern and to reach conclusions which may differ from those of federal or state authorities. This is therefore a case which is entitled to the fullest consideration by this Court.

Respectfully submitted,

ROYAL W. FRANCE,
154 Nassau Street,
New York 4, N. Y.

HUGH H. BOWNES,
Laconia, New Hampshire.

Attorneys for Appellant.

LEONARD B. BOUDIN,
RABINOWITZ AND BOUDIN,
25 Broad Street,
New York 4, N. Y.,
Of Counsel.

July, 1956.

Appendix A

(Opinion of Supreme Court of New Hampshire)

Merrimack,
No. 4533.

LOUIS C. WYMAN, *Attorney General*

v.

WILLARD UPHAUS

Argued December 4, 1956.

Decided February 28, 1957.

PETITION, by the Attorney General under R. S. A. 491:19, 20, for an order to compel compliance by the defendant with two subpoenas *duces tecum* served upon him in the course of a legislative investigation of subversive activities conducted by the Attorney General pursuant to resolutions appearing in Laws 1953, c. 307, and Laws 1955, c. 197.

A similar petition was previously dismissed for want of personal service upon the defendant within the jurisdiction. *State* v. *Uphaus*, 100 N. H. 1. Such service now having been had, the Attorney General seeks to compel compliance with a summons issued for the taking of evidence by him on August 31, 1955, as well as with the summons issued for the witness' appearance before him on September 27, 1954. See *State* v. *Uphaus, supra, 3.* By the subpoenas in question the petitioner sought to require the witness to produce guest registrations at the New Hampshire World Fellowship Center at Albany, New Hampshire for the 1954 and 1955 seasons; to disclose the names of employees at the Center for the same seasons; and to produce "all correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics" at the Center during those seasons. Trial by the Court (*Grant*, J.).

Over the objection of the defendant and subject to his exception, he was ordered to produce the guest registrations in question. His objection to disclosure of the names of employees was sustained; and the Court transferred without ruling the question of whether he may properly be required to produce the correspondence in question. The defendant's exceptions to rulings made in the course of the hearing, including the denial of his motion to dismiss the petition, were likewise reserved and transferred. Upon the defendant's refusal to comply with the order for the production of guest registrations, he was found and adjudged in contempt and ordered committed until he should purge himself of his contempt. Pending transfer of his exceptions he was admitted to bail. Other facts are stated in the opinion.

Louis C. Wyman, Attorney General (by brief and orally), pro se.

Royal W. France (of New York) and Nighswander, Lord & Bownes (Mr. France and Mr. Bownes orally), for the defendant.

Per Curiam. New Hampshire World Fellowship Center, Inc. is a New Hampshire corporation which maintains accommodations for the public at Albany, New Hampshire, during the summer season. By means of a sign near the highway the public is invited to stop there at specified rates. The defendant, a native of Indiana and resident of New Haven, Connecticut, has been executive director of the Center since 1953. He described the Center thus: "The World Fellowship of Faiths is a religious-motivated movement in the highest sense which seeks to bring together for fellowship and discussion the representatives of all faiths to the end that there may be peace, brotherhood and plenty for all men, women and children. It is a movement world-wide in its purpose."

In the course of interrogation by the Attorney General, both privately and before the Court, the defendant furnished the names of persons who spoke or conducted discussions at the Center in the course of the 1954 and 1955 seasons. Some twenty persons, all non-residents, were named by the witness as speakers in 1954, and over twenty-eight as speakers in 1955, a number of the latter being persons who had spoken in 1954. Information in the possession of the Attorney General concerning some of these persons and their connection with organizations or agencies considered to be communist-influenced or controlled, was contained in his report to the 1955 Legislature, which was before the Trial Court. Attorney General's Report on Subversive Activities, New Hampshire, 1955, pp. 136-156 Likewise, information concerning the defendant's connections with and support of similar organizations was before the Court in the same report. *Id.*, pp. 162-175.

The defendant in the course of the proceedings has placed no reliance upon the Fifth Amendment to the Constitution of the United States, or the Fifteenth Article of the New Hampshire Bill of Rights. He testified that he was not a Communist and never had been, and that none of the speakers at the Center, or its guests, were to his knowledge Communists, although he was aware of the connections held by many of them and frankly conceded his own activities in past years. He testified that at no time at the Center was there any advocacy of overthrow of the government by force or violence. A teacher by profession, and holding a Ph. D. degree in religious education from Yale, he described himself as a pacifist, and believer in a "form of Christian social society."

The witness testified that the Center could accommodate a maximum of sixty persons for a meal, and that the guest register for the 1954 season consisted of approximately three hundred sixty names and addresses, upon three by five cards, kept by him "in an office" in New Haven. He testified that the register for 1955, similarly kept, consisted

of about two hundred fifty names and addresses up to August 31, 1955, and "something over three hundred" for the summer. In refusing to produce the registrations, the witness characterized the inquiries of the Attorney General as an "attempt • • • to harass and intimidate me and to destroy the work of the World Fellowship of Faiths" and "a direct invasion of Christian conscience, and authority higher than that of the state." He refused upon the ground of conscience to give the names and address "of people who to my knowledge have never done anything to injure their country and who came to World Fellowship Center solely for vacation, recreation and friendly discusions"; because to do so "would turn [him] into a contemptible informer" and he could not "involve innocent people in the Attorney General's network." Specifically he relied upon the First and Fourth Amendments to the Constitution of the United States and Articles 4th, 5th and 19th of the New Hampshire Bill of Rights.

In this court, the defendant has relied upon the same constitutional provisions. He contends that the investigation is unconstitutional and invalid by reason of the decision of the United States Supreme Court in *Pennsylvania* v. *Nelson*, 350 U. S. 497. He further contends that the information sought by the petitioner has not been shown to be relevant or pertinent to the subject of the investigation, that information before the Trial Court was incompetent because hearsay, and that the order committing him until he should purge himself of his contempt is invalid because indefinite and constituting cruel and unusual punishment. Constitution of the United States, Amend. VIII.

I. We are confronted at the outset by the contention that the investigation is shown to be invalid by the decision of the United States Supreme Court in *Pennsylvania* v. *Nelson, supra.* The same contention was advanced without success on motion for rehearing in *Wyman* v. *Sweezy*, 100 N. H. 103 and was strongly urged in *Kahn* v. *Wyman*,

100 N. H. 245. In the latter case, after full consideration the opinion was expressed that *Pennsylvania* v. *Nelson, supra,* did not preclude conduct of the "investigation of subversive activities within the state as distinct from * * * the prosecution of crimes." See also, *State* v. *Raley* (Ohio), 136 N. E. (2d) 295, 307. We see no present reason to recede from the views previously expressed.

In this connection it may be of interest to note that courts of other jurisdictions which have thought it necessary because of the *Pennsylvania* decision, *supra,* to dismiss prosecutions charging offenses against the state as well as the federal government have done so with reservation of the possibility that some "kind of sedition [might be] directed so exclusively against the State as to fall outside the sweep of * * * *Pennsylvania* v. *Nelson.*" *Commonwealth* v. *Gilbert* (Mass.), 134 N. E. (2d) 13, 16. See also, *Bradley* v. *Commonwealth* (Ky.), 291 S. W. 843, 849.

The circumstance that the usefulness of the investigation authorized by the resolutions of 1953 and 1955 has been diminished by the holding of the *Pennsylvania* case does not preclude continuance of the investigation for any purposes which may remain open. See 70 Harvard L. R. 95, 119, and footnote 148; Note, 31 Ind. L. J. 270, 281-5. The defendant's argument that the investigation is invalid cannot be adopted.

II. The witness Uphaus contends that the record fails to establish the relevancy of the evidence sought and ordered to be produced. It is fundamental that "the power exercised by a committee * * * must be within both the authority delegated to it and also within the competence of the .[legislative body.] to confer upon the committee." *United States* v. *Lamont,* 18 F. R. D. 27, *aff'd* 236 F. (2d) 312. Although as a result of *Pennsylvania* v. *Nelson, supra,* the State is without authority to prosecute offenses against the federal government, the power to investigate to de-

termine "whether subversive persons as defined in said [1951] act are presently located within this state" and whether "necessary legislation" should on that account be recommended (*Id.*) remains unimpaired. In this connection it may be well to observe that any questions of policy regarding this legislation are not for the court but belong exclusively to the Legislature and this distinction we are bound to respect. *Chronicle &c. Pub. Co.* v. *Attorney General,* 94 N. H. 148, 151. If through its legally authorized committee, the Attorney General (*Wyman* v. *Sweezy,* 100 N. H. 103, 105), the Legislature has asked for relevant information it is entitled to it. The test to determine whether the question is relevant is to inquire whether "the question is directed at a *possible* answer • • • which would be reasonably concerned with the main object of the investigation." *Wyman* v. *Sweezy, supra,* 106.

To establish relevancy in the case before us, the petitioner relied substantially upon the content of Uphaus' answer, and the information concerning him and speakers at the Center which was summarized in the report to the 1955 Legislature hereinbefore cited. The witness objected to the latter information as hearsay and incompetent. This objection has not been strongly urged before us and we have already rejected this argument in *Wyman* v. *Sweezy, supra,* decided since the hearings of the Attorney General in this case were held. The petitioner is clearly entitled to act upon "reasonable or reliable" information (Laws 1953, c. 307) which he may present to the Court, even though in hearsay form to establish the relevancy of his inquiry. *Wyman* v. *Sweezy, supra,* 111. As was observed in *United States* v. *Sacher,* 139 F. Supp. 855, 860, in considering a similar objection: "Obviously hearsay testimony • • • may sufficiently establish • • • pertinency of the questions here involved and the reasons for asking them."

The witness refuses to produce the guest registrations of World Fellowship, claiming in effect that they cannot

possibly be reasonably concerned with "whether subversives are presently located within the state." Laws 1953, *c.* 307. In determining the worth of this objection it appears necessary to detail some of the information disclosed by the record as being in the Attorney General's possession and bearing on whether the question as to the guest cards was relevant, since the context in which a question is asked may "indicate its relevancy • • •." *Wyman* v. *Sweezy*, *supra*, 107.

It appears that the witness, while he does not claim its protection here, has pleaded the Fifth Amendment when questioned about Communist matters by a congressional committee. He was a supporter of numerous organizations on the subversive list prepared by the House committee and was ousted in 1950 from the National Religious and Labor Foundation because, without its consent, he participated in Communist front activities. He attended the Warsaw Congress, which he said he knew was "Soviet influenced," at the invitation of a man who he admittedly knew had an international reputation as an open Communist. At this Congress the United States was attacked for allegedly using germ warfare in Korea.

Not less than nineteen speakers invited by Uphaus to talk at World Fellowship had either been members of the Communist Party or had connections or affiliations with it or with one or more of the organizations cited as subversive or Communist controlled in the United States Attorney General's list. His attorney asserts that the witness is "not at all concerned about his associations." In this connection it may be noted that throughout the examination of Uphaus the latter dwelt at length on the high ideals of his organization and his love for and belief in freedom. It is not for this court to pass on the truth of these representations. The committee was at liberty unquestionably to believe the witness. On the other hand, it was equally free to decide that Lord Salisbury's famous dictum might

be applicable: "If you will study history, you will find that freedom, when it has been destroyed, has always been destroyed by those who shelter themselves under the cover of its forms, and who speak its language with unparalleled eloquence and vigor."

In many instances Uphaus knew that the speakers at World Fellowship were members of one or more organizations cited as subversive by the United States Attorney General, but he claimed he did not know whether they or such persons as Paul Robeson with whom at times he had had correspondence, were Communists. However this may be, we have already held that whether persons "were or were not in fact Communist Party members or subversive persons is not decisive on the issue of relevancy." *Wyman* v. *Sweezy, supra,* 112. The Attorney General did not have to prove them Communists or subversives before he asked questions which were directed at a possible answer which would be "reasonably concerned with a main object of the investigation.. *Id.,* 112. It is equally true that the Attorney General was not required to prove that World Fellowship was a subversive organization before making inquiry concerning it. *Id.,* 112.

Literature was distributed at the World Fellowship Center, examples being such material as a pamphlet by Molotov on Soviet policy and another on American-Russian friendship, the opening line of which was "Back to Stalingrad." However, as Mr. Uphaus himself said, it made no difference to him whether his guests believed in Communism or not. "It depends on his conduct while he is there" whether he is permitted to remain. The witness admits that he has had correspondence with persons who have been reputed or alleged to be Communist Party members. He also concedes that he said "a grace" which contained the following words, "God bless the revolution," but he claims this referred to "any revolution." As previously noted, belief in his statement was not compelled. A book available at the Center entitled "World Fellowship of Faith,"

contained an article which after supporting Communism reads: "If any government stands in the way that government must be overthrown." And again, there was a statement to the effect, "If any people stand in the way, that people must be destroyed; * * * we must banish God from the skies and capitalists from the earth." The witness denies that he subscribes to "everything" in this publication.

In the light of this information and in this setting, Uphaus maintains that the guest regstrations of World Fellowship cannot *possibly* contain any information bearing on whether, at the time of the investigation, subversive persons were "located wthin this state." *Wyman* v. *Sweezy,* 100 N. H. 103, 106. We believe this contention so unrelated to reality that it requires no further answer than the above recital of some of the information possessed by the Attorney General and the law applicable to the situation. Other authorities have reached the same conclusion in similar circumstances. See *Flaxer* v. *United States,* 235 F. (2d) 821; *Marshall* v. *United States,* 176 F. (2d) 473; *Morford* v. *United States,* 176 F. (2d) 54.

The case of *Rumely* v. *United States,* 197 F. (2d) 166, cert. denied, 334 U. S. 843, relied upon by the witness, so far from being an authority for his position, appears upon analysis to support the State's contention. In the *Rumely* case the investigation was concerned with lobbying and the question was whether a publisher of books must disclose the names of those who purchased them. The Court held that he did not have to and that the effort to influence public opinion upon national affairs was a protected freedom of speech which Congress could not abridge "unless urgent necessity in the public interest reequire it to do so." *Id.,* 173. The opinion went on to assert that *"on the contrary," Communism poses a threat to* "the security of this country," and for that reason Congress had *"the power and a duty* to inquire into Communism and the Communists." *Id.,* p. 173, citing *Barsky* v. *United States,* 167 F. (2d) 241, cert. denied, 334 U. S. 843. (Emphasis ours.)

In passing it may be well to note in commenting on the stress which the *Rumely* case lays on the "urgent necessity" of investigating Communist activities as balanced against the right to freedom of speech, which the witness contends is controlling here, that our Legislature, in common with the federal government and most other states, has found this necessity exists to a degree so urgent, and has given the reasons so cogently, that it seems unnecessary to revert to them again, even in the most summary fashion. It may also be worth considering that for many years guest registrations in public places such as World Fellowship have been open to inspection "at all times" by "the sheriff, or his deputies and to any police officer." RSA 353:3. So far as appears in this State, no one has ever questioned the validity of such a law until the Communist issue arose.

In conclusion, we believe that the Legislature through its lawfully authorized committee, the Attorney General, has demanded clearly relevant information. We hold it is entitled to it. Accordingly, the order of the Superior Court requiring the witness to produce the guest registrations is sustained and his exception is overruled.

III. The Trial Court transferred without ruling the "question of an order requiring the production of all correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics at World Fellowship Inc. during the 1954 and 1955 seasons." The petitioner made it apparent at the trial that the subpoenas were intended to require production of correspondence conducted during the specified years only.

The witness testified that in 1954 there was correspondence with some fifteen to twenty persons, and that correspondence was conducted in 1955 with certain specified speakers. He testified that there "was never," in any of the correspondence, "anything suggesting that they discuss

the overthrow of government by force or violence, or any topics relating to the overthrow of government by force and violence, or that they discuss Marxism or Leninism." He declined to produce the requested correspondence, relying upon the defense of irrelevancy, and of violation of the First, Fourth, and Fourteenth Amendments to the Constitution of the United States, and Articles 4th, 5th and 19th of the New Hampshire Bill of Rights.

As was pointed out in *Wyman* v. *Sweezy, supra,* the legislative committee was not bound to accept the assurance of the witness that the correspondence in question contained nothing relevant. "The witness could not by his answer impose upon the investigating committee the burden of producing evidence that a doctrine aimed at the violent overthrow of government was in fact advocated before it could inquire of him concerning the lecture." *Id.,* 108.

The defendant vigorously objects to use made of the list of organizations cited by the United States Attorney General as subversive or communist controlled. Reliance is placed by him upon various holdings of the courts, establishing that connection with organizations so listed is not proof of guilt of subversion. We recognize that such a listing of itself establishes neither the character of the organization nor of persons associated with it. *Joint Anti-Fascist Refugee Comm.* v. *McGrath,* 341 U. S. 123, *supra; Barsky* v. *Board of Regents,* 347 U. S. 442, 456, 460. See also, *Wieman* v. *Updegraf,* 344 U. S. 183; *Schactman* v. *Dulles,* 225 F. (2d) 938, 943; *Lawson* v. *Housing Authority,* 270 Wis. 269; *Hughes* v. *Board,* 141 N. Y. S. (2d) 392.

The question under our statute is not whether the listing by the Attorney General, admittedly hearsay as used in these proceedings, is competent evidence upon which the rights of individuals to employment or housing may be made to depend, but whether it constitutes information which the legislative committee may consider so far "reasonable or reliable" as to warrant further inquiry concerning the persons affected. The information in the

petitioner's possession, including the listing by the Attorney General of organizations with which the defendant and speakers at the Center had connections, could be found sufficiently reasonable or reliable to warrant further inquiry concerning their relationship with each other and their activities at the Center.

The possibility that the correspondence which it is sought to have produced may yield no information tending to show subversive purposes is not determinative of the relevancy of the request for its production. As was pointed out in *United States* v. *Orman*, 207 F. (2d) 148, 154, 155, the question of relevancy turns upon the substance of the question, and the possibility that the answer may be relevant, rather than upon the actual character of the answer when obtained. "Although his answer might have proved that he was not [linked with unlawful activity] it was not his right to deny this knowledge to the Committee." *Id.*, 155. See also, *Wyman* v. *Sweezy, supra*, 106, 112. We conclude that an order for production of the correspondence would not be invalid upon the ground that inquiry concerning it could not be found relevant.

The question remains whether such an order would violate constitutional rights under the First Amendment to the United States Constitution, or under the Fourth Amendment guaranteeing the right to be secure against "unreasonable searches and seizures," the former of which at least becomes applicable to state action by reason of the Fourteenth Amendment (*Gitlow* v. *New York*, 286 U. S. 652, 666); or rights, under the state Constitution, "of Conscience" (Art. 4th), of religious freedom (Art. 5th), and "to be secure from all unreasonable searches and seizures" (Art. 19th). We are of the opinion that the order would not violate such rights as a matter of law. By public exposition of their views, the defendant and the speakers in question chose overtly to place their views in the public eye. As against the expressed public interest

in learning the nature and purposes of these expositions, based upon reasonable ground for believing that they may have been subversive in character, the witness or the speakers may not now enshroud their purposes in a cloak of the "freedom of silence." See 47 Mich. L. R. 181, 213-222. Their right is to be free from "unreasonable" searches and seizures; and disclosure of the contents of their correspondence, like disclosure of the content of the witness Sweezy's lecture, may be compellable in the interest of satisfying the public need for disclosure of circumstances reasonably thought to be concerned with the object of the legislative investigation. *Wyman* v. *Sweezy, supra,* 106-109.

It is not to be disputed that the right to be exempt from arbitrary disclosures of personal and private affairs has always been regarded as of great importance. *Sinclair* v. *United States,* 279 U. S. 263, 292. See also, *Boyd* v. *United States,* 616, 621-622. An order for the production of papers under a subpoena *duces tecum* may constitute an unreasonable search and seizure. *Hale* v. *Henkel,* 201 U. S. 43, 76. But one which requires the production of relevant documents in furtherance of an authorized investigation is not such a search and seizure. See *United States* v. *Orman,* 207 F. (2d) 148, 158. It is the "unjustifiable intrusion" which violates the Fourth Amendment. See Brandeis, *J.* dissenting, in *Olmstead* v. *United States,* 277 U. S. 438, 478-479.

The principal issue with respect to the order sought in this case is whether production of the correspondence is relevant (*United States* v. *Orman, supra,* 158), and within reasonable and definite limits. *Oklahoma Press Publishing Co.* v. *Walling,* 327 U. S. 186, 196, 202-214. It might be thought that production of all correspondence requested, whether or not relating to proposed speaking engagements at the Center, would exceed the bounds of relevancy. On the other hand correspondence not directly concerned with such an engagement might be thought relevant to show the

defendant's acquaintance with the speakers and their views and to shed light upon the probable nature of their discussions at the Center, some of which, according to the defendant, consisted merely of telling "stories of their lives, their interests, and their problems." We therefore consider that an order to produce the correspondence specified by the subpoena could be found warranted by the record and would not be precluded as in violation of constitutional rights. *Barsky* v. *United States*, 167 F. (2d) 241; *United States* v. *Orman, supra.*

The atmosphere of religion which surrounds the defendant's activities does not necessarily insulate them from investigation. The petitioner voices a purpose "to show that the advocacy of this so-called peace crusade is for the purpose of achieving a quicker and a cheaper occupation by the Soviet Union and Communism." Only by investigation of these activities can it be determined whether their purpose is what the committee claims, or whether the organization of which the defendant is director is in fact "an organization the bona fide purpose of which is to promote world peace * * * through constitutional means" which the statute excludes from the definition of a "foreign subversive organization" (RSA 588:1), and which the defendant claims the World Fellowship Center to be.

The exception to denial of the motion to dismiss is overruled. Upon remand the Trial Court may exercise its discretion with respect to the entry of an order to enforce the command of the subpoena for the production of correspondence.

IV. Finally the argument of the defendant that the order of committal for contempt constitutes an "indeterminate sentence" which is invalid because "cruel and unusual punishment" (Const. of the U. S., Amend. VIII; N. H. Const., Pt. 1, Art. 33rd) merits brief consideration. The function of the order entered below was not punishment in vindication of the public interest, but coercion to

compel compliance with the prior order of the court to produce the registrations. *Penfield* v. *S. E. C.*, 330 U. S. 585, 593. See also, *United States* v. *United Mine Workers*, 330 U. S. 293, 302; *Yates* v. *United States*, 227 F. (2d) 844. Consequently statutes regulating the imposition of sentences for crime are inapplicable. The committal ordered is terminable upon the witness purging himself of contempt, and is not considered violative of the constitutional provisions relied upon by the defendant.

Remanded

DUNCAN and GOODNOW, *JJ.* dissented in part.

DUNCAN, *J.*, dissenting in part: I concur in all of the foregoing opinion, except section II thereof. In my judgment the order requiring the defendant to produce the guest registrations should be vacated, and I therefore dissent from section II of the opinion for reasons hereinafter expressed.

As a result of *Pennsylvania* v. *Nelson*, 350 U. S. 497, the investigation authorized by the Legislature of this state is now limited to investigation of the question of "whether subversive persons as defined in said [1951] act are presently located within this state" (Laws 1953, c. 302) and whether "necessary legislation" should on that account be recommended. *Id.* The right of the committee "to exact testimony and to call for the production of documents must be found in this language." *United States* v. *Rumely*, 345 U. S. 441, 444. See also, *United States* v. *Kamin*, 136 F. Supp. 791; *United States* v. *Lamont*, 236 F. (2d) 312. The inquiry must therefore be pertinent to the issue of whether subversive persons "are presently located within this state" if it is to be permitted.

The committee's demand for production of the guest registration was supported by no claim for information in the possession of the committee concerning the guests (other than speakers) to indicate that their identification by name might relate to the subject matter of the investi-

gation. Cf. *Wyman* v. *Sweezy*, 100 N. H. 103, 112. The demand rested only upon the testimony of the witness as to the total number of guests for each session, in the course of which he stated that "very few" of the guests came from the State of New Hampshire.

In *Wyman* v. *Sweezy, supra*, it was pointed out that a question may not be sustained as relevant "on a mere possibility that it might lead to later relevant questions" (*Id.*, 106); and that the resolution authorizing the investigation "does not * * * authorize [the Attorney General] to examine private citizens indiscriminately in the mere hope of stumbling upon valuable information." *Id.*, 110. The information sought by the committee is not limited to the names of guests resident here (Cf. *Rumely* v. *United States*, 197 F. (2d) 166, 176) nor is it represented that the names cannot be obtained by less objectionable methods (see *Dennis* v. *United States*, 341 U. S. 494, 542; note, 56 Columbia L. Rev. 798, 801), or that production of the registrations may show the activities of the Center to be subversive. The conduct of the guests does not fall within the same category as that of the defendant and speakers at the Center, which has consisted of public endorsement and advocacy of ideas; and no suggestion has been made that by mere presence at the Center the guests became members of any organization, or advocated any action, lawful or otherwise. The committee seeks to know "who was there," in order by further examination to "find out what went on."

In view of the restricted purpose of the investigation, which is more closely confined than the purposes of the congressional investigations with the cases relied upon by the majority were concerned, production of the registrations is at best only a diffused and remote approach to the issue of whether subversive persons are "presently located" in New Hampshire, and can of itself become relevant only when coupled with other relevant information

concerning the guests which is not shown to be at hand. See *United States* v. *Mathues*, 33 F. (2d) 261; *United States* v. *Barry*, 29 F. (2d) 817; *Bowers* v. *United States*, 202 F. (2d) 452. See also, *Watkins* v. *United States*, 233 F. (2d) 681 at 694. "It is clear that authority over a subject matter does not import authority over all activities of persons concerned in that subject matter." *Rumely* v. *United States*, 197 F. (2d) 166, 176.

Enforcement of the subpoena goes beyond the inquiry held relevant in *Wyman* v. *Sweezy, supra*. It calls for the names of persons largely non-resident who assembled at different times, ostensibly to discuss topics of religious, political, and economic import. The "possible answer" will not of itself be concerned with the "main object of investigation." (*Id.*, 106.)

The order of the Court will operate as a deterrent upon the right of free speech and peaceable assembly guaranteed by the Constitution. *Wyman* v. *Sweezy, supra*, 113. See *Edgerton*, dissenting, *Barsky* v. *United States*, 167 F. (2d) 241, 254. Constitutional rights of the guests as well as of the witness are involved, and the Court need not restrict itself to consideration of the rights of the witness alone. See *Barrows* v. *Jackson*, 346 U. S. 249; *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123, 187; Comment: Inquiry Into Political Activity, 65 Yale L. J. 1155, 1183-1189. The role of the guests with respect to the subject matter was not essentially different from that of the purchasers of pamphlets pertaining to national issues in the *Rumely* case *supra*. "On a record such as this so slim a semblance of pertinency is not enough to justify inquisition violative of the First Amendment." *Rumely* v. *United States*, 197 F. (2d) 166, 172. See also, *United States* v. *Rumely*, 345 U. S. 41, 46.

The record does not disclose such a public necessity for production of the registrations as to warrant abridgment of the privilege of the individuals concerned to exercise their civil liberties free from threatened involvement in the legislative investigation of subversive persons.

I am authorized to state that GOODNOW, *J.*, concurs in this dissent.

Appendix B

(Opinion of Supreme Court of New Hampshire, Upon First Motion for Rehearing)

#4533

WYMAN v. UPHAUS

(Decided February 28, 1957)

Motion for rehearing denied; opinion modified as follows:

On page 4 of the duplicated opinion, strike out the first sentence in the second paragraph from the bottom of the page which commences as follows: "It appears that the witness" etc.

Amend the second sentence in this paragraph to read as follows: "It appears that the witness was a supporter of numerous organizations on the subversive list prepared by the House Committee and was ousted in 1950 from the National Religious and Labor Foundation because, without its consent, he participated in Communist front activities."

March 27, 1957. WHEELER, J., took no part in the consideration of this motion.

Appendix C

(Laws of New Hampshire 1951)

CHAPTER 193

An Act Relative to Subversive Activities

Whereas, there is a World Communist movement under the domination of a foreign power, having as its objective the establishment of totalitarian dictatorship in all parts of the world under its control; and

Whereas, such dictatorship is characterized by the liquidation of all political parties other than the Communist Party, the abolishment of free speech, free assembly, and freedom of religion, and is the complete antithesis of the American constitutional form of government; and

Whereas, the methods used by such a police state include treachery, deceit, infiltration into governmental and other institutions, espionage, sabotage, terrorism and other unlawful means; and

Whereas, the World Communist movement is not a political movement, but is a world-wide conspiracy having sections in each country; and

Whereas, using the methods above set forth, it has already successfully conquered in recent years a large part of the world and has established spearheads in this country in the form of various conspiratorial organizations, some masquerading under the pretense of being poltical parties, others infiltrating organizations which they seek to control in order to further the objectives of the World Communist movement; and

Whereas, the subversive groups have had similar objectives and it is essential to the preservation of the state, as well as for the protection of citizens from unfounded accusations, that criminal acts of a seditious nature be clearly and expressly defined; and

WHEREAS, the methods adopted by subversive persons and organizations render it imperative that the loyalty of persons entering the public employment of the state of New Hampshire or any of its political subdivisions be definitely established, not only for protection of governmental processes but in order to shield employees from unfounded accusations of disloyalty; therefore

Be it enacted by the Senate and House of Representatives in General Court convened:

1. *Subversive Activities.* Amend the Revised Laws by adding after chapter 457 the following new chapter:

CHAPTER 457-A

SUBVERSIVE ACTIVITIES

1. *Definitions.* For the purposes of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, association, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy or alter, or to assist in the

overthrow, destruction or alteration of the constitutional form of government of, the United States, or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide* purpose of which is to promote world peace by alliances or unions with other governments or world federations, unions or governments to be effected through constitutional means.

"Foreign government" means the government of any country or nation other than the government of the United States of America or of one of the states thereof.

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization.

SEDITION

2. *Felonies.* It shall be a felony for any person knowingly and wilfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars or imprisoned for not more than twenty years, or both, at the discretion of the court.

3. *Penalty.* It shall be a felony for any person after August 1, 1951, to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

4. *Barred from Office.* Any person who shall be convicted by a court of competent jurisdiction of violating any

of the provisions of sections 2 and 3 of this chapter, in addition to all other penalties therein provided, shall from the date of such conviction be barred from

(a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of New Hampshire or any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(b) filing or standing for election to any public office in the state of New Hampshire.

5. *Dissolution of Organizers.* It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New Hampshire and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

6. *Assistance Furnished.* For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may

be from time to time so requested. The attorney gener
may testify before any grand jury as to matters referre
to in this chapter as to which he may have information.

7. *Records.* The attorney general shall maintain con
plete records of all information received by him and all ma
ters handled by him under the requirements of this chapte
Such records as may reflect on the loyalty of any reside
of this state shall not be made public nor divulged to an
person except with the permissions of the attorney gener
to effectuate the purposes hereof.

8. *Grand Jury Inquiries.* The superior court, when i
its discretion it appears appropriate or when informed b
the county solicitor that there is information or evidence
the character described in section 2 of this chapter to b
considered by the grand jury, shall charge the grand jur
to inquire into violations of this chapter for the purpose
proper action, and further to inquire generally into the pu
poses, processes and activities and any other matters affec
ing communism or any related or other subversive organiz
tions, associations, groups or persons.

LOYALTY

9. *Employment.* No subversive person, as defined
this chapter, shall be eligible for employment in, or a
pointment to any office, or any position of trust or profit
the government of, or in the administration of the busine
of this state, or of any county, municipality, or oth
political subdivision of this state.

10. *Written Statements Required.* Every person a
every board, commission, council, department, court
other agency of the state of New Hampshire or any politic
subdivision thereof, who or which appoints or employs
supervises in any manner the appointment or employme
of public officials or employees shall establish by rules, reg

lations or otherwise, procedures designed to ascertain before any person, including teachers and other employees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

11. *Exceptions.* The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine, and by rule and regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

12. *Present Employees.* Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivision thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this chapter, namely, any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person

to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence: or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the state of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

13. *Discharge of Personnel; Hearing.* Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the state classified service shall establish rules or procedures similar to those required herein for classi-

fied services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

14. *Declarations of Candidates.* No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavit aforesaid.

15. *False Statements.* Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes a material misstatement of fact (a) in any such written

statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 457 of the Revised Laws.

16. *Separability.* If any provision, phrase, or clause of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions, phrases, or clauses or applications of this chapter which can be given effect without the invalid provision, phrase, or clause or application and to this end the provisions, phrases and clauses of this chapter are declared to be severable.

17. *Title.* This chapter may be cited as the Subversive Activities Act of 1951.

This act shall take effect August 1, 1951.

(Approved August 1, 1951.)

(New Hampshire Laws, 1953)

Joint Resolution Relating to the Investigation of Subversive Activities

Resolved by the Senate and House of Representatives in General Court convened:

That the attorney general is hereby authorized and directed to make full and complete investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state. The attorney general is authorized to act upon his own motion and upon such information as in his judgment may be reasonable or reliable. He may authorize any member of his staff to conduct on his behalf any part of the investigation herein provided for and in such event and for such purposes any member so authorized shall have all of the powers herein granted to the attorney general.

For the purposes of this resolution, the attorney general or any duly authorized member of his staff is authorized to sit and act at such times and places during this session of the 1953 legislature, recess and adjourned periods, and to employ such attorneys, experts, clerical and other assistance as may be required, to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, and to administer such oaths, to take such testimony and to make such expenditures within the limitations authorized herein as he deems advisable. The provisions of section 7 of chapter 193 of the Laws of 1951 shall be inapplicable to the investigation provided for herein, and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes of this resolution.

The attorney general is directed to proceed with criminal prosecutions under the subversive activities act whenever evidence presented to him in the course of the investigation indicates violations thereof, and he shall report to the 1955 session on the first day of its regular session the results of this investigation, together with his recommendations, if any, for necessary legislation. There is hereby appropriated for the expenses of this investigation the sum of ten thousand dollars which shall include the cost of printing such report as is provided for by this resolution and shall be expended under the direction of the attorney general, but nothing herein contained shall limit the power of the attorney general to act in cases of reasonable necessity under the provisions of section 11 of chapter 24 of the Revised Laws. The governor is hereby authorized to draw his warrants for the sum hereby appropriated out of any money in the treasury not otherwise appropriated.

[Approved Jun 17, 1953.]

(New Hampshire Laws, 1955)

CHAPTER 197.

AN ACT RELATIVE TO INVESTIGATION OF SUBVERSIVE ACTIVITIES.

Be it enacted by the Senate and House of Representatives in General Court convened:

1. SUBVERSIVE INVESTIGATION. The investigation of subversive activities by the attorney general provided for by chapter 307 of the Laws of 1953, as continued by a resolution approved January 13, 1955, is hereby continued in full force and effect, in form, manner and authority as therein provided for the further period until June 30, 1957. The attorney general shall report to the general court of 1957 the results of this further investigation together with his recommendations, if any, for necessary legislation. He may at any time during said period temporarily or permanently conclude his investigation hereunder if, in his opinion, no useful public purpose would be served by continuation of the investigation. There is hereby appropriated for the expenses of this continued investigation a sum not to exceed forty-two thousand five hundred dollars, which shall include the cost of printing such report as is provided for hereby, but nothing herein contained shall limit the power of the attorney general to act in cases of reasonable necessity under the provisions of section 11 of chapter 24 of the Revised Laws (section 12, chapter 7, RSA). The governor is hereby authorized to draw his warrants for the sum hereby appropriated out of any money in the treasury not otherwise appropriated.

2. TAKES EFFECT. This act shall take effect upon its passage.

[Approved June 14, 1955.]